UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

MARCI J. BITTNER,	:	No.
Plaintiff	:	
v.	:	Civil Action – Law
SNYDER COUNTY, PENNSYLVANIA, and MICHAEL SHOLLEY, DISTRICT ATTORNEY OF SNYDER COUNTY, PENNSYLVANIA,	:	
Defendants	:	Jury Trial Demanded

COMPLAINT (CIVIL ACTION)

NATURE OF ACTION

1.

This is an action for judgment against Defendants Snyder County, Pennsylvania, and Michael Sholley, District Attorney of Synder County, Pennsylvania for damages and attorney's fees under the provisions of 42 U.S.C. §§ 1983 and 1988, for violations of Plaintiff's civil rights under the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution and rights under Commonwealth of Pennsylvania statutes and common law.

JURISDICTION

2.

This Court has subject matter jurisdiction over Plaintiff's claims arising under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution, and the provisions of 42 U.S.C.A. § 1983 by virtue of 28 U.S.C.A. §§ 1331 and 1367.

VENUE

3.

Venue lies in the Middle District of Pennsylvania and is authorized by 28 U.S.C.A. § 1391 because the Plaintiff resides in the District, and Defendants are a local government and a representative of a local government with offices located in the District, and the Plaintiff's constitutional and statutory rights were violated in the Middle District.

PARTIES

4.

Plaintiff, Marci J. Bittner, is a citizen of the United States and an adult individual residing at 7570 Hillside Drive, Spring Grove, Pennsylvania 17362.

5.

Defendant Snyder County, is a local government entity of the Commonwealth of Pennsylvania, acting

by and through the Snyder County District Attorney who under color of state law has policy, custom and procedure-making authority for Snyder County in the administration of the District Attorney's Office, with a business address of Snyder County Courthouse, 9 West Market Street, P.O. Box 217, Middleburg, Pennsylvania 17842.

6.

Defendant Michael Sholley, is the District Attorney of Snyder County and is being sued in his representative capacity, with a business address of Snyder County Courthouse, 9 West Market Street, P.O. Box 217, Middleburg, Pennsylvania 17842.

FACTS

7.

Plaintiff is the custodial mother of a son, now 18 years of age, and is divorced from Jeff Staley, his non-custodial father.

8.

Plaintiff remarried and is the mother of two additional children, aged 6 and 7 at the time of the incident, now ages 7 and 8.

9.

On March 9, 2006, a criminal complaint was filed by the District Attorney of Snyder County against Plaintiff's ex-husband alleging that he was guilty of crimes committed upon the person of Plaintiff's 18 year old son.

10.

On or about June, 2006, Plaintiff was contacted by the Office of the District Attorney of Snyder County and notified that her testimony would be needed at the trial of her ex-husband.

11.

On or about June, 2006, Plaintiff informed the District Attorney's Office that she needed transportation to Snyder County because she did not have a license and could not drive due to a medical condition.

12.

The criminal trial of Plaintiff's ex-husband was scheduled for May 29, 30, 31, and June 1, 2007 in the Snyder County Courthouse, Middleburg, Pennsylvania.

13.

The District Attorney of Snyder County requested a Subpoena to Attend and Testify for

Plaintiff, which was issued by the Snyder County Prothonotary/Clerk of Court on April 24, 2007.

14.

The Subpoena to Attend and Testify on May 29, 30, and 31 and June 1, 2007 was hand-delivered by Patrolman Chad Thomas of the Middleburg Borough Police Department, an agent of the District Attorney of Snyder County and acting pursuant to the policies of Snyder County, and Plaintiff signed for it on May 21, 2007 at her residence in Spring Grove, Pennsylvania. A copy of the Subpoena is attached as Exhibit A and incorporated by reference herein.

15.

At this time, Plaintiff advised Patrolman Thomas, an agent of the District Attorney of Snyder County, that she could not drive, had two children and needed both transportation to the courthouse and custodial care for her children.

16.

The Plaintiff did not receive witness compensation and travel fees from Snyder County, which was located 87.3 miles from her home.

17.

On or about Monday, May 21, 2007, Plaintiff again called the Office of the District Attorney of Snyder County to remind them that she needed transportation from Spring Grove to the Snyder County Courthouse in Middleburg, Pennsylvania, a distance of approximately 175 miles round trip.

18.

On or about Monday, May 21, 2007, a staff member of the Office of District Attorney of Snyder County told Plaintiff that the message that Plaintiff did not drive and needed transportation from Spring Grove to Middleburg had been given to the District Attorney.

19.

On or about Monday, May 21, 2007, a staff member of the Office of District Attorney of Snyder County told Plaintiff that transportation would be provided for her from Spring Grove to Middleburg.

20.

On or about Monday, May 21, 2007, Plaintiff told a staff member of the Office of District Attorney of Snyder County that Plaintiff's 6 and 7 year old children needed to be supervised and placed on the school bus during the trial.

21.

On or about Monday, May 21, 2007, a staff member of the Office of District Attorney of Snyder County told the Plaintiff that someone would be provided to take care of her children and put them on the school bus.

22.

On or about Monday, May 21, 2007, a staff member of the Office of District Attorney of Snyder County told Plaintiff that the District Attorney would return a call on Wednesday, May 23, or Friday, May 25, 2007.

23.

Neither the District Attorney of Snyder County nor a staff member of his Office returned a call to Plaintiff.

24.

On or about May 29, 2007, the District Attorney of Snyder County, or someone acting on his behalf, made application to the 17th Judicial District Court of Common Pleas for a bench warrant to arrest the Plaintiff, for failure to appear as a witness for her ex-husband's criminal trial on May 29, 2007, without advising the court of the agreed conditions to the subpoena.

25.

On May 29, 2007, a bench warrant was issued by the Court for the "immediate production" of Plaintiff.

26.

The bench warrant was given to the police without appropriate training on proper methods of arrest and transport of non-criminal arrestees, and acting pursuant to Snyder County policy and custom established by the District Attorney, Plaintiff was unlawfully arrested on the bench warrant at her home in Spring Grove, Pennsylvania on May 30, 2007 by Chad Thomas, Patrolman of the Middleburg Borough Police Department, as an agent of Snyder County and at the direction of the District Attorney of Snyder County.

27.

Plaintiff, in sight of her neighbors, was handcuffed while in her driveway, and placed in the back seat of a police car by Patrolman Thomas.

28.

Even though Plaintiff was compliant and posed no threat, Patrolman Thomas told Plaintiff she was handcuffed because "procedures" required that she be handcuffed.

29.

Plaintiff was transported from Spring Grove to the Snyder County Courthouse in Middleburg, a distance of approximately 87 miles, handcuffed, in a police car with a glass partition between the front and back seat that did not permit the air conditioned cooled air to reach the back seat, by police who were agents of the District Attorney and Snyder County.

30.

The rear windows of the police car were closed, eliminating air circulation to and in the back seat where Plaintiff was placed.

31.

The maximum temperature on May 30, 2007 in York, Pennsylvania, based on National Weather Service Daily Summary Data, was 87 degrees Fahrenheit with a maximum humidity of 97%.

32.

After an approximately two and a half (2.5) hour trip, based on instructions given to Patrolman Thomas, Plaintiff was not taken for an immediate hearing on her arrest but rather was taken directly to the Snyder County District Attorney's Office.

33.

The handcuffs were removed from Plaintiff only when the Plaintiff arrived at the Snyder County Courthouse.

34.

In the interview of Plaintiff by the District Attorney of Snyder County, Plaintiff reminded the District Attorney that his secretary or a staff member of his Office had promised that transportation would be provided to her to testify at the criminal trial of her ex-husband on May 29, 30, 31, and June 1, 2007.

35.

At 2:02 p.m on May 30, 2007, the Prothonotary/ Clerk of Courts of Snyder County received a Petition to Withdraw Bench Warrant for Plaintiff from the District Attorney of Snyder County.

36.

While the Petition stated that contact had been made with Plaintiff, that Plaintiff had assured that she would appear in the future, and requested that the bench warrant be vacated, it contained no explanation of the facts surrounding the arrest or why Plaintiff had not complied with the subpoena.

37.

Plaintiff was informed by the District Attorney of Snyder County that to solve Plaintiff's transportation needs, Plaintiff's "husband would be subpoenaed in the future", even though he had no relevant testimonial information.

38.

Based on the Petition filed by the District Attorney of Snyder County, the Court signed an Order vacating the bench warrant for Plaintiff, effective at 2:10 p.m., May 30, 2007.

39.

Plaintiff did not attend any hearing or appear before the Judge issuing the bench warrant after her arrest.

40.

At approximately 3:00 p.m., May 30, 2007, while in the District Attorney's Office, Plaintiff was informed that she was not being returned to her home in Spring Grove, Pennsylvania, but that she was going to be "dropped-off" at the house of one of her relatives in Newport, Pennsylvania, approximately twenty (20) miles away from the Snyder County Courthouse.

41.

Plaintiff was taken to the house in Newport, Pennsylvania where she was released from custody.

42.

Newport, Pennsylvania is located approximately 67 miles from Plaintiff's home in Spring Grove, Pennsylvania.

43.

Plaintiff's husband was required to travel to Newport, Pennsylvania to pick-up Plaintiff.

44.

Plaintiff was not subsequently subpoenaed by the District Attorney of Snyder County to testify at the criminal trial of her ex-husband, who was convicted without the need for Plaintiff's testimony and sentenced to state prison for eighteen months to ten years on July 17, 2007.

45.

The District Attorney of Snyder County, Pennsylvania is a Snyder County officer elected by the qualified electors of the County.

46.

The District Attorney is the official Snyder County, Pennsylvania policymaker for the administration of the Snyder County Office of District Attorney.

COUNT I – Violation of 42 U.S.C. § 1983

Marci J. Bittner

v.

Snyder County, Pennsylvania

47.

Plaintiff incorporates Paragraphs 1 through 46 herein as though fully set forth at length.

48.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.] 42 U.S.C.A. § 1983

49.

Defendant Snyder County, acting through the Snyder County District Attorney, failed to meet its U.S. Constitutional duties when it deprived Plaintiff of her rights, privileges and immunities secured by the Fourth, Fifth and Fourteenth Amendments, by obtaining under 42 Pa.C.S.A. § 5904 a bench warrant without a hearing, and arresting and handcuffing Plaintiff when she was not in contempt of the subpoena, and the District Attorney knew or should have known she was not in contempt and her non-appearance was involuntary and because of a failure of the District Attorney to comply with agreed conditions of the subpoena.

50.

Defendant Snyder County, acting through the Snyder County District Attorney, failed to meet its statutory duty under 42 Pa. C.S.A. § 5903 to provide Plaintiff with witness compensation, travel mileage, with lodging and assistance.

51.

Defendant Snyder County, acting through the Snyder County District Attorney, failed to meet its special duty arising from the promises to provide Plaintiff with transportation to Snyder County and to provide child care.

52.

Defendant Snyder County, acting through the Snyder County District Attorney, failed to meet its U.S. Constitutional duty to establish that there was probable cause for a bench warrant to arrest Plaintiff because she had not appeared at trial, when transportation and child care had not been provided as promised.

53.

Defendant Snyder County, acting through the Snyder County District Attorney, failed to meet its U.S. Constitutional and Commonwealth of Pennsylvania common law duties to insure that the Plaintiff was not subjected to misconduct subsequent to her arrest, by the deliberate use of excessive physical force in being handcuffed in sweltering conditions for the duration of the two and a half (2.5) hour trip from Spring Grove, Pennsylvania to Middleburg, Pennsylvania.

54.

Defendant Snyder County, acting through the Snyder County District Attorney, failed to meet its U.S. Constitutional duty to provide due process to Plaintiff under the provisions of Pa.R.Crim.P. Rule 150, 42 Pa.C.S.A.

55.

Defendant Snyder County, acting through the Snyder County District Attorney, had established and followed a policy, custom or procedure to not provide witnesses subpoenaed to testify at trial with transportation, witness compensation, travel mileage, with lodging and assistance with the subpoena, and a policy, custom or procedure indifferent to the need to provide the same, which violated Plaintiff's Fourth, Fifth and Fourteenth Amendment rights under the U.S. Constitution, and Pennsylvania statutory rights.

56.

Defendant Snyder County, acting through the Snyder County District Attorney, established and followed a policy, custom or procedure to not require that probable cause of intentional non-compliance to a subpoena be established before a bench warrant for arrest is requested, and established and followed a policy, custom or procedure indifferent to the need to provide the same, which violated Plaintiff's Fourth, Fifth and Fourteenth Amendment rights under the U.S. Constitution, and Pennsylvania statutory rights.

57.

Defendant Snyder County, acting through the Snyder County District Attorney, established and followed a policy, custom or procedure to not require that a written motion with certification be presented to the court for a bench warrant, and established and

followed a policy, custom or procedure indifferent to the need to provide the same, which violated Plaintiff's Fourth, Fifth and Fourteenth Amendment rights under the U.S. Constitution, and Rules of Criminal Procedure of Snyder and Union Counties..

58.

Defendant Snyder County, acting through the Snyder County District Attorney, established and followed a policy, custom or procedure to not provide a post-arrest hearing, and established and followed a policy, custom or procedure indifferent to the need to provide the same, which violated Plaintiff's Fourth and Fourteenth Amendment rights under the U.S. Constitution and Pennsylvania statutory rights

59.

Defendant Snyder County, acting through the Snyder County District Attorney, established and followed a policy, custom or procedure to vacate a bench warrant instead of providing a post-arrest hearing, and established and followed a policy, custom or procedure indifferent to the need to provide the same, which violated Plaintiff's Fourth and Fourteenth Amendment rights under the U.S. Constitution and Pennsylvania statutory rights.

60.

Defendant Snyder County, acting through the Snyder County District Attorney, established and followed a policy, custom or procedure to not return persons who were arrested to the place of arrest, and established and followed a policy, custom or procedure indifferent to the need to provide the same, which violated Plaintiff's Fourth and Fourteenth Amendment rights under the U.S. Constitution.

61.

Defendant Snyder County, acting through the Snyder County District Attorney, established and followed a policy, custom or procedure to not adequately train or supervise employees who had the responsibility to provide witnesses subpoenaed to testify at trial with transportation, witness compensation, travel mileage, with lodging and assistance, and established and followed a policy, custom or procedure indifferent to the need to provide the same, which violated Plaintiff's Fourth, Fifth and Fourteenth Amendment rights under the U.S. Constitution and Pennsylvania statutes.

62.

Defendant Snyder County, acting through the Snyder County District Attorney, established and followed a policy, custom or procedure to not adequately train or supervise employees who had the responsibility to insure that probable cause be

established before a bench warrant for arrest is requested, and established and followed a policy, custom or procedure indifferent to the need to provide the same, which violated Plaintiff's Fourth, Fifth and Fourteenth Amendment rights under the U.S. Constitution.

63.

Defendant Snyder County, acting through the Snyder County District Attorney, established and followed a policy, custom or procedure to not adequately train or supervise employees who had the responsibility to insure that a post-arrest hearing was provided, and established and followed a policy, custom or procedure indifferent to the need to provide the same, which violated Plaintiff's Fourth, Fifth and Fourteenth Amendment rights under the U.S. Constitution.

64.

Defendant Snyder County, acting through the Snyder County District Attorney, established and followed a policy, custom or procedure to not adequately train or supervise employees who had the responsibility to insure that persons who were arrested were returned to the place of arrest, and established and followed a policy, custom or procedure indifferent to the need to provide the same, which violated Plaintiff's Fourth, Fifth and Fourteenth Amendment rights under the U.S. Constitution.

65.

Defendant Snyder County, acting through the Snyder County District Attorney, established and followed a policy, custom or procedure to not adequately train or supervise persons who had the responsibility to make bench warrant arrests about misconduct subsequent to arrest, including the deliberate use of excessive physical force in being handcuffed in sweltering conditions, and established and followed a policy, custom or procedure indifferent to provide the same, which violated Plaintiff's Fourth, Fifth and Fourteenth Amendment rights under the U.S. Constitution and Commonwealth of Pennsylvania common law.

66.

As a direct result of Defendant Snyder County's egregiously unacceptable, outrageous, or conscience shocking wrongful conduct, acting through the Snyder County District Attorney, of promising but not providing Plaintiff with transportation and child care, requesting and obtaining a bench warrant for her arrest for not appearing as a witness without probable cause, releasing her from custody without a hearing and abandoning her approximately 67 miles away from her home, deprived of her Fourth, Fifth and Fourteenth Amendment rights under the U.S. Constitution, causing injuries.

67.

As a direct result of Defendant Snyder County's egregiously unacceptable, outrageous, or conscience shocking wrongful conduct, acting through the Snyder County District Attorney, Plaintiff was arrested and detained, handcuffed, in sight of her neighbors, and taken to Snyder County, deprived of her Fourth, Fifth and Fourteenth Amendment rights under the U.S. Constitution, causing injuries.

68.

As a direct result of Defendant Snyder County's egregiously unacceptable, outrageous, or conscience shocking wrongful conduct, acting through the Snyder County District Attorney, Plaintiff was subjected to misconduct subsequent to her arrest, by the deliberate use of excessive physical force in being handcuffed in sweltering conditions for the duration of the two and a half (2.5) hour trip from Spring Grove, Pennsylvania to Middleburg, Pennsylvania in violation of her Fourth, Fifth and Fourteenth Amendment rights under the U.S. Constitution and Commonwealth of Pennsylvania common law, causing injuries.

69.

As a direct result of Defendant Snyder County's egregiously unacceptable, outrageous, or conscience shocking wrongful conduct, acting through the Snyder County District Attorney, Plaintiff was

subjected to an invasion of privacy in violation of her rights under the U.S. Constitution, causing injuries.

70.

As a direct result of Defendant Snyder County's egregiously unacceptable, outrageous, or conscience shocking wrongful conduct, acting through the Snyder County District Attorney, Plaintiff was stigmatized, her freedom of association was interfered with, and she experienced pain and suffering, mental and emotional distress, anxiety, embarrassment, nervousness, humiliation, and injury to reputation and dignity, causing injuries.

71.

Defendant Snyder County is liable to Plaintiff Marci J. Bittner for her injuries because it knew or should have known, acting through the Snyder County District Attorney, its chief law enforcement officer and County policy maker, that its conduct and its policies, customs or procedures were unconstitutional, and/or was indifferent to the need to provide constitutional policies, customs or procedures, as detailed in this Complaint, resulting in violations of the Plaintiff's rights under the U.S. Constitution and Commonwealth of Pennsylvania statutes and common law.

WHEREFORE, Plaintiff now respectfully demands a judgment against Defendant Snyder County

for monetary relief for damages, interest and costs, and attorney's fees in an amount in excess of any jurisdictional amount requiring compulsory arbitration.

Respectfully submitted,

The Law Offices of Donald L. Reihart

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